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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

March 7, 1991

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR91-127

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11,124.

You have received a request from an unsuccessful applicant for an Emergency Medical Technician position for the following information:

1. "all test scores utilized in evaluating";
2. "all written evaluations and recommendations by testers and administrators";
3. "all tests/records utilized in employment selection by EMS";
4. "final comments made by administrators who made the final selections"; and
5. "all scores, written evaluations, and selection comments from all testers and administrators of all applicants who were hired by EMS."

You have arranged the documents you found responsive to this request into Exhibits B through E. We have considered the exceptions you claimed, specifically sections 3(a)(11), 3(a)(1), 3(a)(17), and 3(a)(22) and have reviewed the documents at issue.

We agree that the information in Exhibit B is excepted from disclosure under section 3(a)(11) of the Open Records Act as intra-agency advice, opinion, and recommendation.

Open Records Decision No. 538 (1990). The materials in Exhibits C and E consisting of subjective evaluations of applicants are likewise excepted. However, Exhibits C and E also contain applicants' scores on objective tests, such as a multiple choice exam and a test of an applicant's ability to complete physical tasks. Such objective data do not comprise advice, opinion, or recommendation, but are rather wholly factual, and so are not excepted from disclosure under section 3(a)(11). See Open Records Decision No. 450 (1986). We note that prior decisions of this office have determined that the test scores of applicants for public employment are not protected by constitutional or common law privacy concepts, and so may not be withheld under section 3(a)(1). See, e.g., Attorney General Opinion H-483 (1974), Open Records Decision Nos. 441 (1986; 154 (1977). We have marked the documents in Exhibit C that must be released; you must also release the corresponding materials represented in Exhibit E.

The test scores discussed above appear on the corrected test answer sheets themselves. Part of the request reaches all tests used in the selection process. Section 3(a)(22) of the Open Records Act permits you to withhold test items developed by the agency, as well as documents indicating correct answers to the items, such as the corrected answer sheets. See Open Records Decision No. 537 (1990). Therefore, you may withhold the tests used to select employees, as well as the objective test answer sheets, except for the scores received, the applicant's name and the test heading.

You claim that some of the material in Exhibit D is excepted by section 3(a)(1) as information deemed confidential by law. The items you identify are those pertaining to medical history, salary, home address and telephone number, and family status. We disagree that applicants' salary information is protected by privacy law, as such information is neither highly intimate nor embarrassing, and is, moreover, of legitimate public concern, even if it pertains to remuneration received in private employment. Open Records Decision Nos. 471 (1987); 441 (1986). You also claim that the home addresses and telephone numbers of applicants who are now public employees may be withheld under section 3(a)(17) and section 3A. These provisions allow the agency to withhold such information only if the employee has fulfilled the section 3A requirements for making the information confidential. Open Records Decision No. 530 (1989). You do not indicate whether the employee in question has done so.

If this employee, or any other whose records are subject to this request, has followed such procedures, the information must be withheld; otherwise, it must be disclosed. Id.

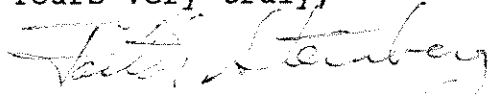
On the other hand, we agree that section 3(a)(1) protection extends to any applicant medical records generated by a physician pursuant to section 5.08(b) of article 4495b, V.T.C.S. Open Records Decision No. 578 (1990). As for statements of medical history made by the applicant, these may be withheld under section 3(a)(1) only if their disclosure would meet the test for violations of disclosural privacy. Open Records Decision No. 370 (1983). Prior opinions of this office have established that certain kinds of medical information, e.g., information relating to intimate parts of the body, obstetrical/gynecological problems, mental or emotional illness, or chemical dependency meet this test, and may be withheld. See Open Records Decision Nos. 370 (1983); 262 (1980). Finally, if highly intimate or embarrassing information about family status, such as the fact of illegitimacy, may be discerned from a document in an employee's file, that document may be withheld under section 3(a)(1). There is obviously no legitimate public interest in knowing such information. See Open Records Decision No. 486 (1987).

You have also requested our determination on whether the privacy or property interests of the individual represented in Exhibits D and E require withholding "of all or part of the material." We have made determinations for the specific information about which you indicated concern; if you have concerns about additional information we would appreciate your directing our attention to it. Without such direction, we find no other information excepted under section 3(a)(1).

Although you would like a decision about whether or not the Minnesota Multiphasic Personality Inventory sometimes used in the employment process is protected from disclosure under section 3(a)(10), you state that you are not sure that it is within the scope of the present request. We cannot give you an answer without knowing (1) if this instrument is indeed included in the request and (2) your argument for its exception from required public disclosure under section 3(a)(10). If you determine that this instrument has been requested, you may inform us and we will offer the third party concerned an opportunity to state its objections to disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-127.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/lcd

Ref.: ID# 11124

Enclosure: Open Records Decision Nos. 538, 450, 441, 471,
537, 530, 370, 578

cc: Ms. Kathy Hector
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